

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DUANE DELANTE JEFFERSON,
Petitioner,
VS.

DEE ANDERSON, Sheriff,
Tarrant County, Texas, and
RICK THALER, Director,
T.D.C.J., Correctional
Institutions Div.,
Respondents.

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§ CIVIL ACTION NO. 4:09-CV-477-Y
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ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS
AND ORDER DENYING CERTIFICATE OF APPEALABILITY

Before the Court is the petition for writ of habeas corpus under 28 U.S.C. § 2254 of petitioner Duane Delante Jefferson, along with the October 30, 2009, findings, conclusions, and recommendation of the United States magistrate judge. The magistrate judge gave the parties until November 20 to file written objections to the findings, conclusions, and recommendation. As of the date of this order, no written objections have been filed. Also on October 30, 2009, respondent Thaler filed a motion to dismiss, but Jefferson has not filed any response to that motion.

The Court has reviewed the pleadings and the record in this case, and has reviewed for clear error the findings, conclusions and recommendation. The Court concludes that, for the reasons stated by the magistrate judge, the respective motions to dismiss should be granted, and the petition for writ of habeas corpus should be dismissed as moot.

Therefore, the findings, conclusions and recommendation of the magistrate judge are ADOPTED.

The motions to dismiss of Dee Anderson [docket no. 10] and of Rick Thaler [docket no. 16] are GRANTED.

Duane Delante Jefferson's petition for writ of habeas corpus under 28 U.S.C. § 2254 is DISMISSED as moot.

Certificate of Appealability

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253.¹ Rule 11 of the Rules Governing Section 2254 Proceedings now requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."² The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right."³ A petitioner satisfies this standard by showing "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further."⁴

Upon review and consideration of the record in the above-referenced case as to whether petitioner Jefferson has made a showing that reasonable jurists would question this Court's rulings, the Court determines he has not and that a certificate of appealability should not issue for the reasons stated in the

¹See FED. R. APP. P. 22(b).

²RULES GOVERNING SECTION 2254 PROCEEDINGS IN THE UNITED STATES DISTRICT COURTS, RULE 11(a) (December 1, 2009).

³28 U.S.C.A. § 2253(c)(2)(West 2006).

⁴*Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003), citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

October 30, 2009, Findings, Conclusions, and Recommendation of the United States Magistrate Judge.⁵

Therefore, a certificate of appealability should not issue.

SIGNED December 11, 2009.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

⁵See FED. R. APP. P. 22(b); see also 28 U.S.C.A. § 2253(c)(2)(West 2006).